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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 197

GEORGE MARSHALL, *Petitioner,*

vs.

UNITED STATES OF AMERICA, *Respondent.*

No. 236

RICHARD MORFORD, *Petitioner,*

vs.

UNITED STATES OF AMERICA, *Respondent.*

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vs.

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vs.

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No. 766

EDWARD K. BARSKY, et al., *Petitioners,*

vs.

UNITED STATES OF AMERICA, *Respondent.*

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF

Statement

The Council on African Affairs, Inc. (hereinafter called the Council) respectfully moves for leave to file a brief amicus curiae in support of the petition for rehearing in the *Barsky Case* and in support of all the petitions for certiorari herein. Consent to the filing of this brief has been given by all counsel in the cases.

The Council is a membership corporation organized to study the conditions of life and work in Africa and to promote the welfare of the African people. Its activities include the holding of meetings, forums and discussions, the distribution of literature, memorials and studies on conditions and social status of native Africans and the solicitation of funds for the support of these projects.

Obviously the Council, as do similar organizations, relies upon its ability to reach large segments of the American people with the information it has at its disposal and seeks their aid in the accomplishment of the Council's purposes. It is therefore particularly susceptible to any abridgement of the right of any group of the American people to associate with, join or directly or indirectly support this organization. It is the contention of the Council that the Resolution creating the House Un-American Activities Committee (hereinafter called the Committee), and the activities of the Committee are unconstitutional as violating the First, Fourth, and Fifth Amendments to the Constitution.

Argument

Since the issues are fully argued in the petitions and briefs herein, the Council sees no reason for burdening the Court with argument that would be repetitious. We wish only to emphasize that the Resolution and the work of the Committee have led to the most serious attack on civil rights and on constitutional guarantees ever seen in this country.

The Resolution on its face has made this result possible. What are "un-American propaganda activities"? What is "subversive and un-American propaganda" which "attacks the principle of the form of government as guaranteed by our Constitution"? Neither this Court nor any other court, person, or agency has ever defined these phrases. The only use to which they have been put to denounce ideas with which the speaker finds himself in disagreement. The most ambiguous of all terms is "subversive" (*Emerson and Helfeld,* "Loyalty Among Government Employees", 58 Yale L. J. (1948) 12 at 39.)

A statute containing phrases as indefinite and ambiguous as these is clearly unconstitutional in violation of the First and Fifth Amendment (*Herndon* v. *Lowry,* 301 U. S. 242; *Lanzetta* v. *New Jersey,* 306 U. S. 451). And it makes no difference that the statute is not penal but merely authorizes investigation, for this Court has struck down legislation interfering with First Amendment rights no matter how the interference has been attempted (*Thomas* v. *Collins,* 323 U. S. 516; *Hannegan* v. *Esquire,* 327 U. S. 146).

As applied, the Resolution is even more clearly unconstitutional. Studies of the work of the Committee show that it has set itself up as the supreme censor of political ideas and discussion. (See, e. g., Note, 47 Columbia Law Review at 418). The five petitions involved here demonstrate the scope of the Committee's activities. Involved in the five cases are investigations by the Committee of a civil rights organization, of an organization devoted to the encouragement of friendship and understanding between the United States and the Soviet Union, of an organization engaged in the relief of refugees from Franco Spain, and an investigation into the motion picture industry. No Congressional investigation which interferes with such activities, involving as they do the exercise of the rights of free speech, press, assembly, and association can be found to be constitutional. All subpoenas directed towards the production of records relating to such activities,

all questions relating to the political affiliations of persons engaged in such activities, violate the Fourth Amendment.

The Committee in its activities has made it dangerous for any American to express himself freely or to associate freely with his fellows. The Resolution as thus applied is unconstitutional.

For these reasons, we urge that the petitions herein be granted.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1949

No. 197

GEORGE MARSHALL,

Petitioner,

against

THE UNITED STATES OF AMERICA.

To the Chief Justice of the United States and the Associate Justices of the United States Supreme Court:

Petitioner respectfully asks this Court to reconsider its determination made on April 10, 1950, denying petitioner's application for a writ of certiorari to the Court of Appeals for the District of Columbia Circuit to review the affirmance of his conviction for a violation of Section 192 of Title 2 of the United States Code.

This petition is based in part on matters which have either arisen since the filing of the original petition or were not referred to therein and, craving the indulgence of the Court, in part with regard to matters referred to in the original petition.

1. While this Court, by its decision in the *Dennis* case on March 27, 1950, settled the question of the right of government employees to sit as jurors even in cases such as this, one aspect of that problem remains open here. In the *Dennis* case Mr. Justice Minton stressed the fact that there had been full inquiry into the possible prejudice of

jurors because of the impact of the loyalty program, and in the *Morford* case, decided April 10, 1950, the Court reversed a conviction similar to the one here on the ground that the Trial Court had not allowed such inquiry. We respectfully submit that the ruling in the *Morford* case is applicable here also. For in the case at bar two government employees sat on the jury (R. 42), and one applicant for government employment, Mr. Campbell, Juror No. 4 (Tr. 96) * also sat.

The Trial Court here refused to permit the jurors to be adequately questioned on this subject. For it refused to allow the following question to be addressed to all the talesmen who were government employees:

> "G-18. Pursuant to the Executive Order providing for a loyalty check of Government employees, the records and files of the House Committee on Un-American Activities are to be used in the investigation of Government employees. In view of that fact and the fact that the House Committee on Un-American Activities initiated the proceedings which resulted in this trial, have you any fear that if you were required on the evidence in this case to acquit the defendant, that your action in so doing might prejudice you in any way in your Government employment?" (R. 39).

After this question was objected to by government counsel (R. 40) the matter was argued at some length with the result that the Court refused to allow the question to be put (R. 41).

Petitioner is annexing as an appendix hereto and as a part hereof those portions of the transcript of the trial which bear on the examination of those talesmen who were government employees. The questions which petitioner's counsel requested be put are set forth in full from the bottom of page 57 through page 60 of the transcript. Petitioner is omitting the discussion of these questions which followed, since the part which refers to the crucial question

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* These references are to the original page numbers of the voir dire minutes annexed hereto as an appendix.

above quoted, No. 18, is contained in the joint appendix (R. 39-41) and the rest is not relevant since the proceedings in the presence of the jury fully reflect what questions were actually asked.

Commencing on page 108 the Court addressed itself particularly to those members of the panel who were government employees and read to them the first sixteen of the questions originally proposed with some slight verbal modifications. It will be observed that only one of the talesmen, Mr. Carl, stated that he had ever been questioned with regard to possible subversive activities (Tr. 109), but it turned out to be a case of sabotage (Tr. 110). In any event this talesman was challenged by the defense (Tr. 117).

The Trial Court questioned the panel generally about its knowledge of the loyalty order and the check of employees being held pursuant to it. Only one of the jurors, Mr. Endres (who was also later excused—Tr. 120), admitted to any knowledge of this subject (Tr. 111, 112). It is important to note that this talesman was, at a conference at the bench (Tr. 111), asked the question whether in connection with the loyalty check he had any fear that he might be prejudiced by any decision he might make in the case (Tr. 112) and answered that he had no such fear.

This question, however, linking the loyalty order with its impact on a possible decision in the case was not put to any of the other talesmen and was, of course, not heard by them when it was put to Endres at the bench. This was the gist of Question 18 which the Trial Court refused to allow to be put. While it is true that the Trial Court did put the last part of this question (Tr. 114), that was so emasculated as to have no significance. For as put the talesmen were merely asked if they feared that any action in the case might prejudice them in their employment, without any reference whatever to the impact of the loyalty program. Moreover, the Court did not put this question in the context of the questions which did relate to the loyalty program.

Petitioner calls attention to the fact, moreover, that in his case the question of possible bias was greater than in either the *Dennis* or the *Morford* cases. For the organization of which he was head had attacked the Dies Committee and its successors (R. 209). Moreover, the only reliance by the government on the subject of relevancy here was the speech of Congressman Dies which to a large extent was devoted to charges against the Federation (R. 52 ff., 156 ff.). And the committee itself in one of its reports attacked the Federation (see Ex. 17, one of the exhibits physically handed to the Court).

Petitioner submits, therefore, that what happened at this trial is not a compliance with the requirement of investigation of possible bias and prejudice as required by the *Dennis* case and the cases there cited. It should be noted that in the *Dennis* case the questions which were put to the talesmen and quoted in Footnote 4 of the Court's opinion directly connected the possible fear of loss of job with the loyalty test. In this case, as in the *Morford* case, that was not done.

It is respectfully submitted, therefore, that at the very least the same decision should be made in this case as was made in the *Morford* case.

2. Petitioner submits also that his application should be reconsidered because this Court failed to apply to his case the rule laid down in *Christoffel* v. *United States,* 338 U. S. 84. There it was held that where a witness' conduct before a congressional committee is challenged, it is an essential part of the offense with which the witness can be charged that a quorum of the committee was actually present. The same rule has been applied to situations identical with that in which petitioner finds himself, namely, a charge of contempt for failure to produce documents under a subpoena. *Fleischman* v. *United States,* 174 F. (2d) 519, and *Bryan* v. *United States,* 174 F. (2d) 525 (both awaiting decision by this Court after grant of certiorari at the request of the government—338 U. S. 846).

The government made no attempt to show in the case at bar that there was a quorum of the House Committee on Un-American Activities present at the time of petitioner's alleged contempt. Petitioner's motion to dismiss the government's case should therefore have been granted (see R. 128).

3. Petitioner asks that his application be reconsidered, moreover, because there is now pending before this Court an application for rehearing in the case of *Barsky* and others (this Court having originally denied certiorari, 334 U. S. 843). Many of the issues in the *Barsky* case are identical with those in petitioner's case so that surely there should be no final determination of his case while the other remains undetermined in this Court.

4. Petitioner also asks the indulgence of the Court further to discuss two of the matters on which his petition originally rested.

Ever since the Dies Committee began developing guilt by association into a weapon of character assassination, persons concerned with the preservation of our free civilization have had doubts about the validity of the resolution under which that committee and its successors acted (see brief amicus of the American Civil Liberties Union submitted in *Eisler* v. *United States,* 338 U. S. 189).

For many years no judicial test of these doubts was possible because the various committees confined their inquiries to persons only too glad to appear before them. When finally witnesses were called who were prepared to test the powers of the committee and the scope of its resolution it was, naturally, supposed that ultimately the question would have to be determined by this Court. The Court's refusal to do so in the first of the cases, *Josephson* v. *United States* (333 U. S. 838, in review of 165 F. (2d) 82), followed by its refusal to do so in the next case, *Barsky* v. *United States* (334 U. S. 843, in review of 167 F. (2d) 241), was, of course, a disappointment in this

respect. Perhaps the *Josephson* case might have been an unsuitable one for a test of the issue because Josephson simply refused to testify at all. And in the exercise of the wide discretionary power which this Court possesses in these matters the Court may have felt in the *Barsky* case that the issues were not yet "ripe for adjudication". Since then the cases have multiplied and there is, of course, every prospect that they will continue to multiply. It is difficult to understand the basis for the Court's present refusal to hear and decide these grave issues.

This is particularly so because of the repeated statements by this Court that the denial of certiorari imports no determination on the merits. Mr. Justice Frankfurter went to great pains to point out the various considerations applicable to the grant of certiorari in *Maryland* v. *Baltimore Radio Shows,* 338 U. S. 912, and this subject was further explored in *Darr* v. *Burford,* decided on April 3, 1950. It is respectfully submitted that none of the considerations referred to in those cases as justifying denial of certiorari is here present and that the Court, as the final arbiter of the Constitution and particularly charged with safeguarding the Bill of Rights, should not evade its responsibilitiy definitely to set at rest the controversy which has arisen with regard to the scope of the resolution under which this committee is created, particularly because of its impact on freedom of opinion and association and because of the vagueness of its terms of reference.

That the issues are important and require determination by this Court was evidently recognized when it granted certiorari in the *Eisler* case (335 U. S. 857). The issues remain unchanged despite Eisler's escape and the consequent dismissal of that case (338 U. S. 883). As Mr. Justice Jackson said when the fact of Eisler's escape was first called to the Court's attention and it was decided merely to postpone action (338 U. S. 189):

> "Under our practice, the grant of Eisler's petition meant that four Justices of this Court, at least, were in agreement that the questions he raised were of

this description. If they were then, they are still. His petition challenged the power of Congress and its investigating committees to hold, and to control the procedures of, investigations of this nature. These questions are recurring ones, certain to be repeated, for the grant of a review has cast doubt not only on the validity of Eisler's conviction but upon congressional procedures as well. No one can know what the law is until this case is decided or until someone can carry a like case through the two lower courts again to get the question here.

"Decision at this time is not urged as a favor to Eisler. If only his interests were involved, they might well be forfeited by his flight. But it is due to Congress and to future witnesses before its committees that we hand down a final decision."

The opportunity which was lost because of Eisler's action has become available to the Court now. Certainly petitioner and those in like case with him should not be required to serve jail sentences until the question has been finally determined.

5. Petitioner also suggests that the problem arising under the Fourth Amendment in relation to the relevancy of the material subpoenaed is important and far-reaching and requires determination by this Court.

Petitioner refused to furnish the list of contributors to the National Federation for Constitutional Liberties because he believed that such list was not relevant to any conceivable inquiry which the committee was authorized to make under the resolution which created it. Nothing has ever been established to the contrary. Petitioner's refusal was, as he explained to the committee (Ex. 14, R. 205), motivated by his fear that the committee would publish the list of contributors and, because it had expressed an unfavorable opinion with regard to the organization itself, smear them in the public mind. These fears had a solid foundation in the experience of others with this Committee (see Ex. 6, R. 179). The consequences of the deci-

sion in this case, if it is allowed to stand, will be that people will be afraid to join or contribute to any organization whose activities are of such a character that it might conceivably come within the unfavorable scrutiny of any legislative committee. The consequences to freedom of association are incalculable.

It should be borne in mind that the committee was authorized to inquire into the diffusion of propaganda only of a certain kind, namely, propaganda which is un-American and subversive and which attacks the principle of the form of government as guaranteed by the Constitution. There was not the slightest evidence or even contention that any of the propaganda diffused by the Federation could be characterized by any of the terms used in the resolution. The Court of Appeals, while finding the propaganda involved in the *Morford* case to be of such character (176 F. (2d) 54), made no similar finding here. The most that it suggested was that the propaganda actually distributed might have been the means for "silent diffusion of subversive doctrines".

There was no evidence whatever for the gratuitous assumption in the opinion of the Court of Appeals on this subject. Without assuming that even such "silent diffusion" would justify the conclusion, we recapitulate:

It is conceded that the subpoena cannot be upheld unless the material called for was pertinent to the inquiry. The material called for can be pertinent to the inquiry only if it bears on the subject matter of the inquiry, namely, the diffusion of propaganda of a certain kind. There was no evidence or contention that the material distributed by the Federation was of that kind. The Court below, therefore, was constrained to invent a new doctrine of "silent diffusion" for which there is no justification whatever. It would be novel doctrine indeed if a person had to go to jail for not having obeyed a subpoena, the only justification for which is assumed and unproved "silent diffusion"—whatever that might mean. The vagueness of this concept itself is such as to require consideration of the subject

matter by this Court. How can a person ever establish that he or his organization has not engaged in activities of this illusive and ill-defined character? To permit conviction under such a standard would be a denial of due process.

Nor is there any basis for the assumption in the government's brief in opposition to the granting of the petition (p. 8) that it might be pertinent to the committee's inquiry to determine whether some of the Federation's funds were collected from Communists. This is putting the cart before the horse. The only inquiry which was relevant was the purpose to which the Federation put its funds. Absent, as there was here, any evidence that the purpose to which the Federation did put its funds came within the scope of the committee's authorized powers, an inquiry with regard to the supporters of the organization would prove nothing relevant to its inquiry. It would create guilt by association with a vengeance. It would taint the propaganda by one of the supposed sources of the funds obtained for its dissemination without regard to the character of the propaganda itself and would taint the other contributors in the same way.

The committee was authorized only to investigate the dissemination of propaganda of a certain kind. Here the record clearly shows that the propaganda distributed by the Federation did not come within the terms of the resolution. That should have been the end of the committee's interest in the Federation. To inquire into its financial records was wholly outside the scope of the resolution. To subpoena its records was an unlawful search and seizure prohibited by the Fourth Amendment to the Constitution. Certainly the issue is important and far-reaching. If this decision stands no organization will be safe from having imputed to it the possibly unpopular character of some of its contributors. Likewise, contributors and members of organizations advocating unpopular causes will be exposed to serious risks. Certainly the matter should not rest without full consideration by this Court.

Conclusion

To recapitulate: An agency of the Government makes an ex-parte finding, on undisclosed evidence, that a certain organization is a Communist front. A member of Congress repeats that statement under cloak of immunity. Several years later a committee of the Congress authorized to investigate the diffusion of propaganda of a particular character subpoenas the head of the organization. In so doing it relies solely on the speech of the member of Congress. The head of the organization testifies before the committee with regard to the activities of the organization and makes available to the committee all the literature distributed by that organization. None of this activity or literature is of a character such as to come within the scope of the committee's powers. The head of the organization refuses to make available a list of contributors to his organization because he believes that to do so would result in the smearing of innocent persons. He is thereafter convicted and sentenced to serve a jail sentence without any finding that the literature distributed by his organization or any of its activities came within the scope of the committee's powers. The conviction is affirmed solely on the theory that there was a possibility that the organization might have engaged in spreading subversive propaganda secretly and silently. Of this there is neither charge nor proof.

Yet this Court so far can see here no issue of freedom of press or association, no issue of due process, no issue of relevancy under the Fourth Amendment. We can only express our bewilderment.

Accordingly, petitioner respectfully asks this Court to reconsider its determination denying his application for a writ of certiorari. This application is made in good faith and not for the purpose of delay.

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April 20, 1950

APPENDIX

Extract from Minutes of Voir Dire

"Questions to Be Addressed to Government Workers

"G-1. In what department or service are you employed? (57)

"G-2. How long have you worked there?

"G-3. In connection with your work, have you been questioned about alleged subversive activities or persons or organizations engaged in such activities by any person in authority?

"G-4. Have you had any discussions with other employees on questions concerning subversive activities or persons or organizations engaged in such activities?

"G-5. Have you ever been questioned by your superiors or by persons in authority on alleged subversive activities or persons or organizations engaged in such activities?

"G-6. Have you ever been questioned by investigators of the Civil Service Commission?

"G-7. Have you ever been questioned by investigators of the Federal Bureau of Investigation?

"G-8. Have you ever been questioned by investigators of the Department of Justice?

"G-9. Have you ever been questioned by investigators of the department in which you work?

"G-10. Have you read or heard about the Presidential Executive Order which provides for the investigation and purge of Government workers for alleged disloyalty? (58)

"G-11. Have you discussed with anyone the Presidential Order on disloyalty?

"G-12. Do you know that at present a loyalty check of Government workers is being conducted pursuant to the Executive Order of the President?

"G-13. Do you know that in connection with such loyalty check, investigations of Government employees are being conducted?

"G-14. Do you know that in connection with such loyalty check, a Loyalty Review Board has been appointed and is functioning?

"G-15. Do you know that in connection with such loyalty check, the Attorney General of the United States has published a list of subversive groups and organizations which is used in connection with such checks?

"G-16. Have you read or seen the Attorney General's list in the newspapers or elsewhere?

"G-17. Have you discussed the organizations on that list with anyone?

"G-18. Pursuant to the Executive Order providing for a loyalty check of Government employees, the records and files of the House Committee on Un-American Activities are to be used in the investigation of Government employees. In view of that fact and the fact that the House Committee on Un-American (59) Activities initiated the proceedings which resulted in this trial, have you any fear that if you were required on the evidence in this case to acquit the defendant, that your action in so doing might prejudice you in any way in your Government employment?

"G-19. Would you have any fear, in view of the facts set forth in the previous question, if on the evidence you voted for acquittal, that such vote may be used against you in any way or subject you to any criticism or ridicule?

"G-20. Friendly or sympathetic association with persons or organizations engaged in alleged subversive activities is a ground for discharge under the President's Executive Order. In view of this fact, do you or do you not believe that because of the nature of this case, if you found the defendant not guilty on the evidence, you might jeopardize your employment by the Government?

"G-21. Would the fact of your employment by the Government influence you in any way in favor of the Government's side of the case and against the defendant?

"Note: The defense reserves the right to propound additional questions if any of the above questions are answered in the affirmative." (60)

* * * * * *

The Court. * * * I will re-state it, ladies and gentlemen of the prospective jury: Is any member of the prospective panel, or any (96) member of his immediate family, an employee of the Government or an applicant for a position with the Government?

Now, sir—we will go in the back row first—No. 4.

Juror Campbell (in seat No. 4). Campbell; I have an application filed.

The Court. What department?

Juror Campbell. Civil Service Commission.

The Court. Very well, sir.

And do you understand that this question now embraces you or your immediate family, Mr. Endres?

Juror Endres (in seat No. 8). Yes, sir—Joseph Endres, now employed at the General Accounting Office.

The Court. Yes, sir.

Juror Grassi (in seat No. 10). Orlando Grassi, now employed at the City Post Office.

Juror Hancock (in seat No. 12). Benjamin Hancock, District Government.

The Court. All right, sir.

Juror Hoffman. Gotthard Hoffman, Model Basin, Navy Department.

The Court. The next gentleman.

Juror Wallin. William L. Wallin, employed Department of Labor; wife employed by the War Department.

The Court. Yes, sir.

Juror Stark. R. J. Stark, United States Naval Research (97) Laboratory.

The Court. Yes, sir.

We excuse Mr. MacDonald on other grounds it isn't necessary to state.

Mr. Isserman. If your Honor please, we would like to get the name of the juror prior to this last one.

(To Juror Wallin:) Where are you employed?

Juror Wallin. The Department of Labor, and my wife is employed by the War Department.

The Court. All right, madam.

Juror Morris. Blanche E. Morris, Bureau of Engraving and Printing.

The Court. Yes.

Juror Miller. William E. Miller, Air Adjutant General's Office.

The Court. All right, sir.

Yes, ma'am?

Juror Wilkins. Norma Wilkins. I have an application in at the Bureau of Standards.

The Court. Is any member of the panel or a member of his immediate family associated with, or has any member been associated with, any agency, either public or private, engaged in the detection of law violations?

Mrs. Cryer is the sister of the Major and Superintendent of the Metropolitan Police Force. Is there anybody else? (98)

Yes, sir—Mr. Kelly?

Juror Kelly. I have a brother in the Metropolitan Police Department.

The Court. Are any members of the panel or members of their immediate family receiving pensions or other benefits from the Government or any of its agencies?

Mrs. Cryer?

Juror Cryer (in seat No. 6). I receive the pension on account of my husband being in World War One.

The Court. That is all in the box?

Juror Lattisaw. Alice Lattisaw—my son.

The Court. Yes, ma'am.

Juror Loeb. My sister receives disability from the Government.

The Court. What is your name?

Juror Loeb. Eleanor Loeb.

Juror Morris. Mrs. Morris—receives a pension from the United States Navy. (99)

* * * * * * *

The Court (to counsel): As to the first question, gentlemen, we have covered that.

Mr. Horsky. Yes, sir.

The Court. Do you desire to ask the second question, in view of the answers as to where they are actually employed —the length of time?

Mr. Isserman. Does your Honor ask whether we are going to withdraw that question?

The Court. I wonder if it would serve any purpose.

Mr. Isserman. We could agree to withdraw it, your Honor.

The Court. You do not desire that it be asked? (108)

Mr. Isserman. No.

The Court (to the panel). In connection with your work, have you been questioned about alleged subversive activities or persons or organizations engaged in such activities, by any person in authority? (No response.)

Have you had any discussions with other employees on questions concerning subversive activities or persons or organizations engaged in such activities?

Mr. Isserman. If the Court please, I am not quite sure that the members of the panel understand that is addressed especially to Government workers.

The Court. It is addressed especially to Government workers, and to all others, too.

Have you ever been questioned by your superiors or by persons in authority on alleged subversive activities or persons or organizations engaged in such activities? (Juror Carl stood.)

The Court. Mr. Carl.

Juror Carl. The same.

The Court. You have stated that for the record.

Juror Carl. Your Honor, I am referring to that——

The Court. You needn't say another thing, Mr. Carl. I didn't mean to be curt to you.

Juror Carl. I am not referring to the same thing I said. (109)

The Court. Come to the bench.

(At the bench:)

The Court (to Juror Carl). The reason I do that is if you had heard something these other jurors had not heard, it may put something in their minds they don't know about.

Juror Carl. Yes, sir; that is perfectly all right.

The Court. Yes, sir?

Juror Carl. I am referring to an occasion I was called in in an investigation during the summer time, at the Naval Laboratory.

The Court. Yes, sir.

Juror Carl. But I don't know what connection that has with subversive activities. There was a suspected case of sabotage.

Mr. Isserman. Did you work on that case?

Juror Carl. I was working at the Naval Observatory. After I left, somebody took over the work I was working on, and put some rouge in the bearing of one of these time signal transmitters; and I was called in on the investigation of this rouge appearing in the time signal transmitter.

Mr. Isserman. Were you a witness, or did you investigate it?

Juror Carl. No; they called me in to ask a question about it. And it occurred two or three months after I had left. It had nothing to do with me; but they questioned me (110) on how it could possibly have gotten in it.

The Court. You being an expert in that particular field?

Juror Carl. I was working there at the time on this time signal transmitter.

The Court. All right; thank you, Mr. Carl.

(Counsel having returned to the trial table and Juror Carl having returned to his seat, No. 5, in the box.)

The Court. Have you ever been questioned by investigators of the Civil Service Commission? (No response.)

Have you ever been questioned by investigators of the Federal Bureau of Investigation? (No response.)

By the Department of Justice? (No response.)

Have you ever been questioned by investigators of the department in which you work? (No response.)

Have you read or heard about the Presidential Executive Order which provides for the investigation of Government workers for alleged disloyalty? (No response.)

Have you discussed with anyone the Presidential Order on disloyalty? (No response.)

Do you know whether a loyalty check of Government workers is being conducted pursuant to the Executive Order of the President? (Juror Endres stood.)

Mr. Endres, come to the bench, please.

(At the bench:)

The Court. This is Mr. Endres. Yes, sir; what is the (111) situation?

Juror Endres. They have had a loyalty check at the General Accounting Office, to all employees. We filled out a form.

The Court. You did, sir?

Juror Endres. Yes, sir.

The Court. Then your answer is that you do know there was a loyalty check, through that form?

Juror Endres. Yes, your Honor.

The Court. Is that all you know about it?

Juror Endres. Yes, sir.

The Court. (To counsel:) Is there something else you would like to ask him?

Mr. Isserman. There are some other questions, your Honor.

The Court. Since he is here now, if there is anything you would like to ask him individually, you may.

Mr. Isserman. I would like to ask him whether in connection with the check he has any fear he might be prejudiced by any decision he might make in this case.

The Court. Yes.

Juror Endres. No, I would have no fear.

The Court. You would have no fear of what might happen to you in the department?

Juror Endres. No, sir. (112)

The Court. (To counsel:) Do you have anything else?

Mr. Murray. I have nothing.

Mr. Isserman. Did you know there was a subversive list published in connection with this loyalty check, of certain organizations?

Juror Endres. If there was such a list, they didn't show it to the employees.

Mr. Isserman. You don't know anything about such a list?

Juror Endres. No, sir.

The Court. Is that all?

Mr. Isserman. Yes, sir.

The Court. All right; thank you, Mr. Endres.

(Counsel having returned to the trial table and Juror Endres having returned to his seat, No. 8, in the box:)

The Court. (To the panel:) Do you know whether in connection with such loyalty check the Attorney General of the United States has published a list of subversive groups and organizations which is used in connection with such checks? (No response.)

Have you read or seen the Attorney General's list in the newspapers or elsewhere? (No response.)

(To counsel:)And the next one will be eliminated, gentlemen.

Mr. Isserman. Yes, sir.

The Court. I will ask you ladies and gentlemen to pay (113) particular attention to this question—not that you haven't paid attention to the others:

Would the fact of your employment by the Government influence you in any way in favor of the Government's side of this case and against the defendant? (No response.)

Does any reason occur to any one of you why you could not sit in this case and render your verdict solely on the evidence adduced from the witness stand and the law as given you by the Court, without favor toward the defendant or prejudice toward the defendant, or favor to the Government or prejudice to the Government?

Juror Stichman. Your Honor, as stated before.

The Court: Yes, you have stated it before.

Mr. Isserman. May I call your Honor's attention to the second half of G-18?

The Court. Yes, sir; and you have correctly called my attention to it.

(To the panel:) Have you any fear that if you were required on the evidence in this case to acquit the defendant, that your action in so doing might prejudice you in any way in your Government employment or otherwise? (No response.) (114)

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(At the bench:)

Mr. Isserman. We would like to challenge Mr. Carl, for cause, on the ground that he has formed an opinion about the committee and its work, which would indicate necessarily he would be against the defendant in this case.

The Court: All right; I will do it.

(To Mr. Murray:) You don't have any objection?

Mr. Murray. No, sir.

Mr. Isserman. And, to save coming up again, Mr. Stichman.

The Court. Yes.

(To Mr. Murray:) There is no objection?

Mr. Murray. No, sir. (117)

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Mr. Isserman. I would like to exercise a peremptory challenge in the case of Juror No. 8, if the Court please.

The Court. Very well.

The Deputy Clerk. Joseph E. Endres, you are excused from serving on this panel. (120)

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